

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRYAN IZAGUIRRE,

Plaintiff,

V.

## UNITED STATES OF AMERICA.

Defendant.

Case No. 2:22-cv-08290-DOC-PD

**ORDER DISMISSING ACTION  
FOR FAILURE TO  
PROSECUTE**

## I. Pertinent Procedural History and Plaintiff's Claims

On November 14, 2022, Plaintiff Bryan Izaguirre, proceeding pro se, filed a Complaint pursuant to 42 U.S.C. § 1983 against the United States of America. [Dkt. No. 1.] The Complaint alleges that in 2020, Rayanna Miller provided the number of Plaintiff's lost social security card to the Orange County Department of Child Support Services, and that Plaintiff's wages were subsequently garnished in an amount totaling \$9,752.61. [*Id.* at 2-4; Exh. B, C.] The Complaint further alleges that in December 2021, a paternity test revealed that Plaintiff was not the father of Rayanna Miller's child, and Plaintiff's child support obligations were terminated. [*Id.* at 3; Exh. G.] Plaintiff alleges that the Social Security Administration ("SSA") provided him

1 with a right to sue letter and thus the ability to file the instant action. [Id. at  
2 3-4; Exh. H.]

3 Plaintiff alleges that as a result of these events, his First, Fourth, Fifth,  
4 Eighth, Ninth, Thirteenth, and Fourteenth Amendment rights were violated.  
5 [Id. at 5-6.] He seeks compensatory and punitive damages in the amount of  
6 \$369,880,000,000,000,000,000.00. [Id. at 7.] He also seeks a “cease-  
7 and-desist order on the defendant ‘United States’ for any surveillance they  
8 have placed on me.” [Id.]

9 On December 16, 2022, Plaintiff filed a First Amended Complaint  
10 (“FAC”). [Dkt. No. 8.] The FAC is substantively identical to the original  
11 Complaint and contains only minor formatting changes. [See Dkt. Nos. 1, 8.]

12 On December 22, 2022, the Court screened the FAC pursuant to 28  
13 U.S.C. § 1915(e)(2)(B)(ii) and issued an Order to Show Cause (“OSC”) why the  
14 Court should not recommend dismissal of the FAC for failure to state  
15 actionable claims no later than January 27, 2023. [Dkt. No. 10.] The OSC  
16 was mailed to the address listed on the FAC.

17 On January 18, 2023, the OSC was returned in the mail to the Clerk,  
18 with the notation “rts not deliverable as addressed.” [Dkt. No. 13.] On  
19 January 23, 2023, the Court issued an Order requiring Plaintiff to provide an  
20 updated address and show cause why the Court should not recommend  
21 dismissal no later than February 8, 2023. [Dkt. No. 14.] On January 31,  
22 2023, the Order was returned in the mail to the Clerk with the notation “rts:  
23 unable to forward.” [Dkt. No. 15.]

24 To date, Plaintiff has not responded to the OSC or the subsequent order,  
25 provided an updated address, or otherwise communicated with the Court  
26 about his case since filing on November 14, 2022. Accordingly, the case is now  
27 subject to dismissal for failure to prosecute pursuant to Rule 41(b) of the  
28 Federal Rules of Civil Procedure and Local Rule 41-6.

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2 **II. Discussion**

3 Rule 41(b) grants district courts the authority to *sua sponte* dismiss  
4 actions for failure to prosecute. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-  
5 30 (1962). In determining whether dismissal for lack of prosecution is  
6 warranted, a court must weigh several factors, including: (1) the public's  
7 interest in expeditious resolution of litigation; (2) the court's need to manage  
8 its docket; (3) the risk of prejudice to defendants; (4) the availability of less  
9 drastic sanctions; and (5) the public policy favoring the disposition of cases on  
10 their merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002); *Ferdik*  
11 *v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992). Dismissal is appropriate  
12 under the foregoing analysis "where at least four factors support dismissal ...  
13 or where at least three factors 'strongly' support dismissal." *Hernandez v.*  
14 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

15 The first two factors – public interest in expeditious resolution of  
16 litigation and the need to manage the Court's docket – weigh in favor of  
17 dismissal. Plaintiff did not file a second amended complaint or provide the  
18 Court his updated address. His failure to file an amended complaint or  
19 update his address—or show good cause for his delay—prevents the Court  
20 from moving this case toward disposition and shows that Plaintiff does not  
21 intend to litigate this action diligently.

22 Arguably, the third factor – prejudice to Defendant – also counsels in  
23 favor of dismissal because Defendant in this case has been served. [Dkt. Nos.  
24 7, 9.] Further, the Ninth Circuit has held that prejudice may be presumed  
25 from unreasonable delay. *See In re Eisen*, 31 F.3d 1447, 1452-53 (9th Cir.  
26 1994); *Moore v. Teflon Commc'ns. Corp.*, 589 F.2d 959, 967-68 (9th Cir. 1978).  
27 Plaintiff's inaction in this matter is an unreasonable delay. In the absence of  
28 any explanation, non-frivolous or otherwise, for Plaintiff's delay, the Court

1 presumes prejudice. *See Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753  
2 (9th Cir. 2002) (presumption of prejudice can be rebutted by a non-frivolous  
3 explanation); *Pagtalunan*, 291 F.3d at 642 (citing *Yourish v. California*  
4 *Amplifier*, 191 F.3d 983, 991 (9th Cir. 1999)).

5 The fourth factor – the availability of less drastic sanctions – ordinarily  
6 counsels against dismissal. However, the Court attempted to avoid outright  
7 dismissal by giving Plaintiff ample time to communicate with the Court,  
8 update the Court with his address, and file an amended complaint. Plaintiff  
9 was also expressly warned that failure to comply with the Court’s orders could  
10 result in dismissal. [Dkt. Nos. 10, 14.] Thus, the Court explored the only  
11 meaningful alternatives to dismissal in its arsenal and found that they were  
12 not effective. *See Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
13 (“The district court need not exhaust every sanction short of dismissal before  
14 finally dismissing a case, but must explore possible and meaningful  
15 alternatives.”) (citation omitted).

16 The fifth factor – the general policy favoring resolution on the merits –  
17 ordinarily weighs against dismissal. *Pagtalunan*, 291 F.3d at 643. It is,  
18 however, the responsibility of the moving party to move the case toward  
19 disposition on the merits at a reasonable pace and to refrain from dilatory and  
20 evasive tactics. *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir.  
21 1991). Because Plaintiff has failed to participate in his own lawsuit, retention  
22 of this case would not increase the likelihood of the matter being resolved on  
23 its merits. This factor does not weigh in favor of or against dismissal.

24 In sum, four out of the five factors support dismissal. The Court  
25 concludes that dismissal for failure to prosecute is warranted.  
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4 For the foregoing reasons, this action is dismissed for failure to  
5 prosecute.

6 **IT IS SO ORDERED.**

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8 Dated: February 27, 2023

*David O. Carter*  
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10 HON. DAVID O. CARTER  
11 UNITED STATES DISTRICT JUDGE  
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